Written Testimony of Verizon EVP Thomas J. Tauke
Federal Communications Commission ETF Hearing
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Chairman Martin, members of the Commission, good morning.

Thank you for the invitation to discuss early termination fees and consumer choice in the communications marketplace. I want to speak generally about early termination fees (ETFs) – what they are … and are not, the important role they play in the wireless market, Verizon's practices in providing consumer choice, including term contracts with ETFs, and finally some suggestions for a policy framework surrounding ETFs for wireless carriers.

Thanks to decisions made by policymakers, including Congress and this Commission, the U.S. wireless marketplace is one of the most competitive and innovative in the world. You allowed the wireless marketplace to develop around consumer needs rather than regulatory mandates and economic regulation, and the result has been an amazing success. The wireless marketplace is working well … for consumers and the American economy.

Perhaps overlooked in the development of the wireless marketplace are term contracts, which feature early termination fees as part of their rate structure. Term contracts generally offer consumers lower equipment and access prices compared to paying for the equipment upfront and month-to-month access charges without a contract.

Term contracts allow the consumer to take advantage of bundled services at competitive prices and the latest devices they choose in exchange for a commitment to keep the service for usually one or two years. In return, service providers have some measure of assurance over a fixed period of time that they may recover their investment, including equipment subsidies, costs of acquiring and retaining customers, and anticipated revenue for providing wireless services.

The wireless industry has found term contracts to be a good business model for several reasons.

- First, one- and two-year contracts allowed wireless service providers to offer consumers the latest wireless devices at subsidized prices, which spurred innovation both on the networks and among handset developers. In our view, term contracts helped put the latest, most sophisticated wireless innovations into the hands of consumers who might, on a cost basis, have found these devices out of reach.
- Second, these arrangements allowed wireless companies to offer consumers unique, bundled services at appealing prices and gave consumers a set price they could anticipate.
- Third, term contracts provided a nascent wireless industry with a customer base that allowed the business to anticipate income and revenue, and map out capital investments in new deployment and technologies.

Today, consumers have many choices in wireless providers, and types of services and devices they choose to use. Network operators, device manufacturers and applications developers are constantly innovating and bringing to market new services, devices, and applications to meet the needs of an increasingly mobile society.

Verizon Wireless offers our customers a number of payment-plan choices to meet their communications needs, some with ETFs and some without. Our experience is that – whether it's the convenience of pricing stability, bundled services, or the discounted rate on the newest devices or services – many customers prefer the benefits of one- or two-year contracts that feature ETFs.

Of course, some customers may not want bundled services or a term contract. They may only want one specific service. They may want the flexibility to add, change or drop services as their needs change. They may want the freedom to switch providers at any time. The wireless industry has options available for them, as well.

These customers can choose to buy a wireless device at a retail store, and then connect to a network provider that supports the chosen device. Or, they can choose to use a service provider that uses a pay-as-you-go option. Some options feature contracts, others do not. Regardless, it is the consumer who chooses, and all of those choices are the result of consumers telling the marketplace what options work best for them.

Verizon has a very solid track record of responding to changing customer demand. For example, Verizon Wireless' Open Development Initiative will not only open our wireless network to non-Verizon Wireless CDMA devices, but will allow entrepreneurs and innovators to develop applications and non-Verizon devices that can connect to our networks.

Other examples can be found in adjustments to our early-termination-fee policies.

Consumers said that wireless ETFs should be pro-rated. In November 2006 we announced our policy to reduce the ETF for each month of the contract that the customer completes. This gives consumers the flexibility they said they want, while helping Verizon Wireless recoup its investment in the consumer.

Consumers said they wanted to be well-informed about contracts with ETFs. During an in-store sales transaction our Customer Service Representatives explain the terms and conditions at least twice during the sales transaction – verbally and in writing – before customers commit to any plan, and the terms are always available on the Verizon Wireless website.

Consumers said they wanted an opt-out period. Today, Verizon Wireless products and services feature a "test drive" period, usually 30 days, and those products and services can be returned or cancelled without paying an ETF during this trial period. We also waive early termination fees in certain circumstances, for example, ongoing service quality issues or military deployments.

The bottom line is this: We listened to consumer concerns, and adjusted our policies. Customers can choose to purchase products and services with or without contracts that feature early termination fees based on their individual needs. And they have many choices – both from Verizon Wireless and our competitors – to meet their wireless needs.

All of this is evidence of a highly competitive and consumer-focused market. The wireless marketplace is working, and working well, to address consumer concerns as they arise – including ETFs. We see no need for additional regulatory oversight on such issues.

That said, it has not gone unnoticed that over the past two years many states, either through legislative or regulatory bodies, have sought to impose policies to address ETFs. The prospect of 50 different sets of rules related to consumer contracts with ETFs would be confusing to consumers, add unnecessary and unreasonable costs to providers (which ultimately are paid by consumers), and not be in keeping with the goal of a national wireless marketplace policy.

Faced with the prospect of multiple state policies on this issue, Verizon believes that appropriate Federal action to establish a national policy is preferable. In an attempt to address consumer concerns about ETFs, and to avoid such confusion about multiple policies, we suggest that the Commission consider adopting a set of national guidelines for ETFs for wireless services to ensure that consumers nationwide have the benefit of a consistent set of standards governing ETFs.

In order to assure a well-functioning marketplace, it is important that any rules the Commission does adopt not be overly prescriptive. The Commission should be careful that rules about ETFs not have the unintended consequence of taking one of the most popular consumer options off the table.

The correct starting point for the Commission's consideration is the fundamental declaration that ETFs are "rates charged" within the meaning of Section 332(c)(3)(A) of the Communications Act. In that provision, Congress decided that a state cannot apply state law to regulate the use, amount, validity, or reasonableness of ETFs, particularly when such review would examine the underlying economic premises of ETFs (or other rate components) as charges in wireless subscriber agreements. In short, Congress precluded states from applying state law to regulate use of ETFs (or other components) in wireless rate structures.

This statement of the reach of Section 332 falls squarely within the meaning of the statute and the Commission's existing precedent on wireless rates. The Commission has recognized that ETFs are valid methods of structuring payments in telecommunications contracts, and, therefore, integral parts of a carrier's rate structure.

In accordance with Congress' adoption of a national policy for wireless rate structures, the Commission should grant CTIA's pending Petition for an Expedited Declaratory Ruling in WT Docket 05-194, and declare that ETFs in wireless term contracts are "rates charged" within the meaning and scope of Section 332(c)(3) of the Communications Act.

As some other panelists will likely point out, granting CTIA's petition will have the effect of pre-empting efforts to regulate the use or reasonableness of ETFs in wireless contracts, either through state legislation or litigation, such as the pending class action litigations discussed in CTIA's Petition. This result is consistent with the policy adopted by Congress, that is, any regulation of wireless rates and rate structures should occur exclusively at the federal level.

Of course, Congress did provide a petition procedure in Section 332(c) for states to follow if they can demonstrate that market conditions fail to protect consumers from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. If, as certain groups claim, term contracts with ETFs harm consumers in some identifiable way, then there is an existing method for the Commission to grant a state authority to address such harms. But the Commission cannot and should not permit states to develop competing and potentially conflicting policies concerning ETFs or assign enforcement authority to states in a blanket manner, thus undermining the national framework for competitive wireless services that Congress intended. Instead, to the extent regulatory oversight of wireless ETFs is needed at all, the FCC should be the responsible agency in order to ensure a consistent national approach.

We believe our current policies are consumer-friendly and responsive to the marketplace. We have also been listening to our customers and carefully studying the recommendations of consumer groups, and we find that the following items appear to encompass the suggestions of consumer organizations for a policy governing ETFs:

- ETFs should be reasonable.

- Consumers should be provided complete information about any ETF, and carriers should proactively inform consumers about any ETF.
- Consumers should have a "trial period" of up to 30 days or ten days after the first bill is issued, during which they may opt out of a contract without paying any contract termination fee. The consumer would be expected to pay for the service used, and a carrier would be permitted to charge a reasonable "restocking" fee for the device.
- Early termination fees should be reduced or pro-rated on a straight-line basis each quarter or month over the life of the contract. Let me give you two examples of how this might work: 1) In a two-year contract with a $120 ETF, the ETF would be reduced $15 after the first quarter and an equivalent amount each quarter thereafter. 2) In a one-year contract with a $100 ETF, the ETF would be reduced $8.33 after the first month and an equivalent amount each month thereafter.
- No ETFs should be charged for contract renewals unless there is additional economic benefit, such a new device, as part of the contract renewal.

While we continue to question the necessity of some of these provisions, we nevertheless believe that an FCC-adopted national policy for wireless ETFs that is consistent with this framework is workable for the wireless industry, and Verizon is prepared to support such a policy.

Finally, you have asked me to discuss ETFs in the context of our fiber to the premises broadband service, FiOS.

Just as consumers have many choices with our wireless products and services, we give our customers choices with our high-speed fiber network, FiOS.

All of our FiOS services, including voice, video and Internet access, are available without ETFs if the customer chooses to purchase them individually on a month-to-month basis. Of course we also offer our customers the option of purchasing bundles or committing to term plans, which have associated early termination fees, but also provide substantial discounts.

The discounts available when customers commit to these plans can make services more affordable by removing up front costs.  Not surprisingly, many customers prefer these plans and enjoy the discounts.  When a customer orders these discount plans we make sure they are aware of our early-termination fee policies at three different points in the ordering process.

As with our wireless services, our FiOS plans serve to increase customer choice and encourage the adoption of broadband services, which are worthy goals I know we all share.   Thank you.